IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1846 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-
and
Hon'ble MR.JUSTICE N.G.NANDI sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MARHABHAI ISHWARBHAI PATEL

Versus

SECOND ADDITIONAL SPL LAND AC OFFICER

Appearance:

1. Special Civil Application No. 1846 of 1992

MR NITIN M AMIN for Petitioner No. 1

MR LR PUJARI, A.G.P.for Respondent No. 1

MR MANISH R BHATT for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE N.G.NANDI

Date of decision: 07/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. The land bearing Survey No.155 admeasuring 4077 sq.mtrs. of village Chenpur, Tal. Daskroi, Dist. Ahmedabad, belonging to the petitioner was acquired by the I.O.C., respondent No.2, for a public purpose of the community centre and staff quarters. Notification u/s.4 of the Land Acquisition Act (for short "the Act") was published on 12.9.1988 followed by the declaration u/s.6 of the Act published on 24.8.1989. Prior to that possession of the land was taken over on 19.11.1988 from the petitioner by way of private negotiation. The Second Additional Special Land Acquisition Officer, respondent No.1, thereafter initiated acquisition proceeding vide Acquisition Case No.15 of 1988 and the Award was passed on 1.8.1991 u/s.12(2) of the Act. The petitioner was awarded compensation at the rate of Rs.50/- per sq.mtr. It is stated at the Bar by the learned Counsel Shri Amin for the petitioner that in Reference the amount was raised to Rs.80/- per sq.mtr. by the Reference Court.

2. As per the Award the amount of compensation was received by the petitioner. However, as per the observation made by the respondent No.1 in Para : 14 of his Award regarding interest the petitioner applied before the respondent No.2 because no interest was awarded u/s.34 of the Act by the respondent No.1. Letter dated 19.9.1991 (Annexure : B) was replied by the Respondent No.2 - I.O.C. on 26.10.1991 (Annexure : C) wherein it was clearly admitted by the I.O.C. that there was no written Agreement or contract between the acquiring body and the petitioner regarding any interest. Not paying the interest u/s.34 of the Act by the respondent No.1 and not complying with the order of the respondent No.1 by the respondent No.2 the petitioner has filed this petition restricting his challenge only to the payment of interest u/s.34 of the Act.

3. Learned Counsel Shri Amin for the petitioner vehemently submitted that it was wrong on the part of the respondent No.1 not to grant interest u/s.34 of the Act which is mandatory. In support of his submission he has placed reliance upon the Supreme Court Judgment in the case of VIJAY COTTON & OIL MILLS LTD. v/s. STATE OF GUJARAT, reported in 1991 (1) GLR 523. Bare reading of Section 34 of the Act makes it clear that person whose land is acquired is entitled for the interest u/s.34 of the Act that has to be paid by the Collector or by the Land Acquisition Officer or by the Acquiring Body. This was not disputed by both the learned Counsel Shri

M.R.Bhatt for the respondent No.2 - IOC and the learned A.G.P. Shri Pujari for the respondent No.1. In case of VIJAY COTTON & OIL MILLS LTD. (Supra) the Hon'ble Supreme Court has gone to that extent saying that Section 34 of the Act is of a mandatory nature and therefore interest must be paid by the Collector even if it is not claimed by the petitioner.

4. In that view of the matter we have no option but to allow this petition. However, learned Counsel Shri Manish Bhatt for the respondent No.2 submitted that Writ is an equitable jurisdiction therefore while awarding the interest u/s.34 of the Act to the petitioner this Court may also take into consideration the fact that by mistake an excess payment of Rs.66,775.50 ps. has been made to the petitioner which is required to be refunded to the respondent No.2. He submitted that after making the said payment immediately it was brought to the notice of the respondent No.1, but unfortunately so far nothing has been done in the matter.

5. Whether it was a mistake in making the excess payment of Rs.66,775.50 ps. or not we would not like to go into that question. This is a writ petition and not regular First Appeal wherein this type of objection can be raised by the other side. If by mistake the payment is made then it is upto the respondent No.2 to have a recourse to the ordinary course of law, but in this petition such prayer cannot be granted.

6. In view of above discussion this petition is allowed and both the respondents are directed to pay the interest to the petitioner as awarded u/s.34 of the Act within 3 months from today. Rule made absolute accordingly. However, there shall be no order as to cost on the peculiar facts and circumstances of the case.

sd/-
(B.J.Shethna,J.)
Date : January 07, 2002 sd/-
(N.G.Nandi, J.)

sas